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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/875,997      | 06/06/2001  | John A. Budny        | 1008-119.US         | 8126             |

23390 7590 01/29/2003

COLIN P ABRAHAMS  
5850 CANOGA AVENUE  
SUITE 400  
WOODLAND HILLS, CA 91367

EXAMINER

WEDDINGTON, KEVIN E

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
**09/875,997**

Applicant(s)  
**Budny et al.**

Examiner  
**Kevin E. Weddington**

Art Unit  
**1614**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on May 17, 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

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CLAIMS 1-29 ARE PRESENTED FOR EXAMINATION.

APPLICANTS' TERMINAL DISCLAIMER FILED MAY 17, 2002 HAS BEEN RECEIVED AND ENTERED.

*DOUBLE PATENTING*

CLAIMS 1-29 OF THIS APPLICATION CONFLICT WITH CLAIMS 1-17 AND 22-25 OF APPLICATION No. 09/587,818. 37 CFR 1.78(B) PROVIDES THAT WHEN TWO OR MORE APPLICATIONS FILED BY THE SAME APPLICANT CONTAIN CONFLICTING CLAIMS, ELIMINATION OF SUCH CLAIMS FROM ALL BUT ONE APPLICATION MAY BE REQUIRED IN THE ABSENCE OF GOOD AND SUFFICIENT REASON FOR THEIR RETENTION DURING PENDENCY IN MORE THAN ONE APPLICATION. APPLICANT IS REQUIRED TO EITHER CANCEL THE CONFLICTING CLAIMS FROM ALL BUT ONE APPLICATION OR MAINTAIN A CLEAR LINE OF DEMARCATION BETWEEN THE APPLICATIONS. SEE MPEP § 822.

CLAIMS 1-29 ARE REJECTED UNDER THE JUDICIALLY CREATED DOCTRINE OF OBVIOUSNESS-TYPE DOUBLE PATENTING AS BEING UNPATENTABLE OVER CLAIMS 1-29 OF U.S. PATENT No. 5,871,714. ALTHOUGH THE CONFLICTING CLAIMS ARE NOT IDENTICAL, THEY ARE NOT PATENTABLY DISTINCT FROM EACH OTHER BECAUSE THE PRESENT APPLICATION DISCLOSES A TWO-COMPONENT COMPOSITION FOR DEGRADING BIOFILM STRUCTURE ASSOCIATED WITH CYSTIC FIBROSIS WITH AN ENZYME AND AN ANCHOR MOLECULAR, AND THE PATENTED APPLICATION DISCLOSES A TWO-COMPONENT COMPOSITION THE SAME INGREDIENTS. THE EXAMINER DOES NOT SEE A DIFFERENCE BETWEEN THE TWO

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APPLICATIONS SINCE THE COMPOSITIONS ARE THE SAME. APPLICANTS ARE NOT ENTITLED TO PROCURE CLAIMS BASED ON DISCOVERY THAT OF KNOWN COMPOSITION MATTER CAN BE ADAPTED TO NEW USE; TO ENTITLE THE APPLICANTS TO PATENT; COMPOSITION MUST BE BOTH NEW AND UNOBVIOUS TO ONE SKILLED IN THE ART.

THE NONSTATUTORY DOUBLE PATENTING REJECTION IS BASED ON A JUDICIALLY CREATED DOCTRINE GROUNDED IN PUBLIC POLICY (A POLICY REFLECTED IN THE STATUTE) SO AS TO PREVENT THE UNJUSTIFIED OR IMPROPER TIMewise EXTENSION OF THE "RIGHT TO EXCLUDE" GRANTED BY A PATENT AND TO PREVENT POSSIBLE HARASSMENT BY MULTIPLE ASSIGNEES. SEE *IN RE GOODMAN*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *IN RE LONGI*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *IN RE VAN ORNUM*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *IN RE VOGEL*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); AND, *IN RE THORINGTON*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A TIMELY FILED TERMINAL DISCLAIMER IN COMPLIANCE WITH 37 CFR 1.321© MAY BE USED TO OVERCOME AN ACTUAL OR PROVISIONAL REJECTION BASED ON A NONSTATUTORY DOUBLE PATENTING GROUND PROVIDED THE CONFLICTING APPLICATION OR PATENT IS SHOWN TO BE COMMONLY OWNED WITH THIS APPLICATION. SEE 37 CFR 1.130(b).


EFFECTIVE JANUARY 1, 1994, A REGISTERED ATTORNEY OR AGENT OF RECORD MAY SIGN A TERMINAL DISCLAIMER. A TERMINAL DISCLAIMER SIGNED BY THE ASSIGNEE MUST FULLY COMPLY WITH 37 CFR 3.73(b).

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ANY INQUIRY CONCERNING THIS COMMUNICATION OR EARLIER COMMUNICATIONS  
FROM THE EXAMINER SHOULD BE DIRECTED TO EXAMINER K. WEDDINGTON WHOSE  
TELEPHONE NUMBER IS (703) 308-1235.

  
Kevin E. Weddington  
Primary Examiner  
Art Unit 1614

K. WEDDINGTON

JANUARY 17, 2003